

Trustmarque cloud solutions provider terms of supply

TRUSTMARQUE CLOUD SOLUTIONS PROVIDER TERMS OF SUPPLY

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TRUSTMARQUE CLOUD SOLUTIONS PROVIDER TERMS OF SUPPLY

These Trustmarque Cloud Solutions Provider Terms of Supply (Agreement) are between the entity who signs this Agreement (“Customer”, “you” or “your”) and Trustmarque Solutions Limited (“Trustmarque”, “we”, “us”, “our” or “Reseller”).

These are the terms on which we agree to supply to you Microsoft Cloud Solutions and Trustmarque Related Services. It is your responsibility to ensure that you have read through all the terms and conditions set out in this Agreement, including any terms that have been referenced herein. If you are unable to access any of the documents referenced, please contact us at eservceshelp@trustmarque.com for a copy.

1. Definitions

“Additional Terms” means the additional terms, which an Order may be subject to, and will be presented and agreed at the time of placing an Order. This excludes any Microsoft Customer Agreement and/or any Non- Microsoft Product terms and conditions.

“Billing Date” means the day of the month you will be billed on, for your Subscription(s). We will advise you of your Billing Date upon placement of your first Order.

“Confidential Information” means any document, material, idea, data or other information which relates to our research and development, trade secrets or business affairs or which is marked as confidential and disclosed by the Customer to We for the purposes of the Trustmarque Services.

“Consumption Based Subscription” means monthly subscriptions that are billed based on actual usage in the preceding month without upfront commitment.

“Customer Data” is defined in the Online Services Terms.

“Customer Solution” is defined in the Online Services Terms.

“Data Protection Legislation” means the Data Protection Act 1998, from the 25th of May 2018, the General Data Protection Regulation ((EU 2016/679) or any replacement legislation applicable in England and Wales from time to time and any other applicable laws relating to the processing of personal data.

“Early Termination Charge” means Microsoft’s discretion charge for early termination of a Subscription before its term ends.

“End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services, or any user of a Customer Solution.

“Fixed Term Subscription” means a subscription to use software for a fixed duration.

“Microsoft” means Microsoft Ireland Operations Limited.

“Microsoft Customer Agreement” means the agreement between you and Microsoft for the licence and use of Microsoft Product (and Non-Microsoft Product as the case may be) Appendix 1.

“Microsoft Product(s)” means any Online Service (including any Software).

“Microsoft SLAs” means the commitments Microsoft make regarding delivery and/or performance of an Online Service, as published at

<https://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=37> or at an alternate site that Microsoft identify.

“Non-Microsoft Product” means any third party-branded software, data, service, website or product but excluding Microsoft Product.

“Order” means an order for Microsoft Product or Non-Microsoft Product via We as Reseller, which also includes the Trustmarque Product and Subscription Management Services and Reactive Support Services. The process for placing an Order is described in ‘Service Description and Service Level Agreement for Trustmarque Cloud Solutions’.

“Online Services” means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

“Online Services Terms” means the Microsoft terms that apply to your use of the Products available at

<https://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=46> The Online Services Terms include terms governing your use of Products that are in addition to the terms in this agreement.

“Portal” means the Trustmarque Enterprise Services Portal, or an alternate site identified by We. The Portal will be the preferred place for updates on pricing, terms and conditions and any other information relating to this Terms of Supply.

“Product and Subscription Management Services” means the assistance provided by We to enable the purchase, activation and management of Microsoft Products by the Customer. These may be provided by the Portal or through other processes or tools. As further described in Appendix 2.

“Reactive Support Services” means the Trustmarque services provided to assist the Customer with issues relating to Microsoft Products. As further described in Appendix 2.

“Software” means software Microsoft provide for installation on your device as part of your Subscription or to use with the Online Service to enable certain functionality.

“Subscription” means an enrolment for Online Services for a defined Term as established by us, which is either a Fixed Term Subscription or a Consumption Based Subscription.

“Term” means the duration of a Subscription (e.g., 30 days or 12 months).

“Trustmarque Related Services” means the Product and Subscription Management Services, Reactive Support Services and Advisory Services provided by us.

“Your Data” means any personal data which is transmitted by or on behalf of You, or is otherwise processed by Us under this agreement or which is generated under this agreement.

2. Resale of Microsoft Cloud Solutions

2.1 This Agreement applies to any Order or any subsequent Orders for Microsoft Product and/or Renewals, Non-Microsoft Products and/or Renewals, and any Trustmarque Related Services provided to you by us. Subject to your compliance with clause 3 and acceptance of the Microsoft Customer Agreement (Appendix 1), we shall make available to you Microsoft Products that have been agreed with Microsoft and quoted for by us, or Microsoft Products that are available on a current price list, which can be requested from us at any time.

2.2 Any Non-Microsoft Products provisioned through Microsoft are subject to the Microsoft Customer Agreement and any additional terms the proprietor wishes to apply. Any Non-Microsoft Products purchased by you from us that have not been provisioned through Microsoft are subject to the proprietor's standard terms and conditions, in the absence of the proprietor's terms and conditions our standard terms and conditions; <https://www.trustmarque.com/Terms-and-Conditions/> apply.

2.3 In the event that you purchase Microsoft Azure and use CloudCheckr Services, you agree to the CloudCheckr End User Licence Agreement; <https://cloudcheckr.com/end-user-license-agreement> .

3. Microsoft Customer Agreement

3.1 The Microsoft Customer Agreement (Appendix 1) is between Customer and Microsoft and consists of Microsoft general terms, the applicable Use Rights and SLAs, and any additional terms Microsoft presents when an Order is placed. The Microsoft Customer Agreement applies to every Order placed for Microsoft Products and must be signed and returned to us before you can place any Orders for Microsoft Products. Microsoft may at its discretion accept or reject any proposed Customer.

3.2 You acknowledge and agree that the Microsoft Customer Agreement is a valid, binding and enforceable agreement between you and Microsoft and that you are liable for and shall indemnify us against any loss or damage incurred as a result of your failure to comply with the terms of the Microsoft Customer Agreement. You further agree that it is your responsibility to ensure that the Microsoft Customer Agreement is signed and returned to us, any failure to sign the Microsoft Customer Agreement may result in your being unable to purchase any Microsoft products/services.

4. Description of Product and/or Services

4.1 We do not make any warranties or representations regarding the Microsoft Products and/or Non-Microsoft Product. Any relevant warranties and representations are made by Microsoft to the Customer in accordance with the Microsoft Customer Agreement and/or the proprietor of Non-Microsoft Products to the Customer in accordance with their standard terms and conditions.

4.2 The Microsoft Customer Agreement supplements this Agreement in relation to the description of the services and products you may Order via us as Reseller of Microsoft Product. We shall therefore be entitled to rely on the terms of the Microsoft Customer Agreement, as they relate to the supply of the Microsoft Products by a Reseller.

5. Microsoft Service Level Agreement

5.1 Microsoft makes certain service levels commitments to Customers in the Microsoft SLAs. These are Microsoft's commitments to the Customer and not Trustmarque's, if you make a claim on the Microsoft SLAs, we will escalate the claim to Microsoft for review. If Microsoft and have approved and agreed to provide any credit to you following a review, we will credit you the amount following receipt of the same from Microsoft to us, in the next invoice.

6. Fixed Term Subscription

6.1 Where you have requested a Fixed Term Subscription, unless otherwise specified on the Order, the term of the subscription will be for a period of 12 months from your Billing Date and will automatically renew unless cancelled by you in advance of the next scheduled

invoice after the 12-month period. Automatic renewals are subject to any concerns we may have on your financial standing and whether you pose or are likely to pose a credit risk.

6.2 A Fixed Term Subscription is pre-billed on a pro-rata based on the applicable monthly Subscription price. The unit price for the Microsoft Product will not change from the price as of the Subscription start date during the term of the 12-month Subscription. Each renewal will be for the same number of months as the Initial Term. Pricing for a renewal will be agreed in a quote supplied by us or if no quote is provided, Trustmarque's pricing in a price list supplied to the Customer that is in effect as of the date of the renewal.

6.3 An Order for a new Fixed Term Subscription will expire 12 full calendar months (or other Term as agreed in an Order) after the Customer's next scheduled Billing Date. For those new Fixed Term Subscriptions, the period between the placing of the Order and the Customer's next scheduled Billing Date will not be charged.

6.4 If a Fixed Term Subscription is cancelled before its Term expires, and during the Customer's billing cycle, we may provide a pro-rata credit for the un-used pre-paid portion of the cancelled Fixed Term Subscription in the Customer's subsequent invoice, on the basis that Microsoft provide the same in respect of the Customer's Subscription and We will not invoice the Customer for any future scheduled billings for that Subscription. The pro-rata credit will be subject to Microsoft's Early Termination Charge if applicable.

6.5 If you decide to cancel your subscription before the fixed term period no refund of monies paid will be provided.

7. Consumption based Subscriptions

7.1 Where you have selected a Consumption Based Subscription you will be billed on the Billing Date based on actual usage in the preceding month with no upfront commitment. Payment is on a monthly basis in arrears.

7.2 Consumption Based Subscriptions do not expire unless cancelled. Consumption Based Subscriptions can be cancelled at any time. Any usage before cancellation will be billed at the next scheduled Billing Date, as a final invoice for the relevant Subscription.

7.3 The pricing charged for Consumption Based Subscriptions will be based on the unit price as provided for by Microsoft during the current billing cycle and will be billed to you on a consumption basis during the Term of your Subscription.

7.4 Any reduction, increase or suspension of licences can take up to 60 days to take effect and show in the invoice.

7.5 Where you have chosen a Consumption Based Subscription with an upfront commitment and you consume more than the anticipated monthly committed amount we will:

7.5.1 notify you of your actual usage as soon as reasonably practicable;

7.5.2 invoice you in full for your actual usage which shall be paid by you in accordance with clause 8;

7.5.3 and require you to raise an additional PO to the value of your revised annual usage based on your most recent consumption pattern.

8. Payment terms

8.1 Unless otherwise agreed, you shall pay all invoices to us, in full, and in cleared funds, within 30 days of date of invoice. Pricing shall be as per the price list which sets out the unit

cost exclusive of VAT, unless a price is separately agreed in an Order. Prices set out in the price list may decrease or increase at any time.

8.2 Without prejudice to any other right or remedy that we may have, if you fail to pay on the due date we may charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays plc accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Alternatively, we may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

8.3 In the event that your internal purchasing requirements, require the issue and use of a valid Purchase Order, you shall be required to provide a valid Purchase Order equating to the total sum of the expected Subscription charge pursuant to an Order for a period of 12 months. In the event that the total sum exceeds the initial purchase order, you shall issue a subsequent purchase order to cover the outstanding amount. You shall be responsible for the usage you consume on your Subscription(s). A value of a Purchase Order shall not limit your liability for Subscription charges.

8.4 We are not liable for any failure on your part to provide an initial or subsequent purchase order. Any failure to provide the purchase order, which subsequently results in a delay to us receiving payment, will allow us to suspend or terminate the Contract and any orders in accordance with clause 8.1 a).

8.5 You may check your usage limits of a Subscription at any time by submitting a service request or via the Portal, if we make that functionality available for the Microsoft Products or Non-Microsoft Products. Any failure by us to notify you of your usage limits, as per any agreed notification process, shall not relieve you of your liability to pay any charges in respect of you Subscriptions that you have purchased.

9. Cancellation and/or Suspension

9.1 We may cancel and/or suspend this Agreement in whole or in part.

- a) Where you have failed to pay an outstanding invoice, and such invoice remains outstanding for a period of 14 days from the date of payment due
- b) Breach of this Agreement and/or the Microsoft Customer Agreement.
- c) Automatically if Microsoft does the same pursuant to the Microsoft Customer Agreement as a result of a customer breach.
- d) Where (acting reasonably) we consider you to be a credit risk
- e) Upon providing you 30 days' notice. We reserve the right to terminate the relevant Order(s) and the Customer's Subscription by providing the Customer on 30 days' notice.

9.2 For the avoidance of doubt suspension or termination of this Contract includes the termination of any on-going subscription licences and any other Microsoft and non-Microsoft products where payment has not been made and suspension or termination of any Trustmarque Related Services.

9.3 Suspension or cancellation of this Agreement by us shall not relieve you of your liabilities under this Agreement and the Microsoft Customer Agreement. You shall be liable for any invoice which relates to the consumption of Microsoft Products up until the expiry of the termination notice.

9.4 Upon expiry, termination or cancellation of this Agreement for whatever reason, you shall pay in full all outstanding invoices within 10 days. You will have sixty (60) days to notify us if you wish to migrate any Customer Data to either a new Subscription with us, with Microsoft directly, or some other service. Upon request, and if within the timescale, we will assist you with migration of the Customer Data at an additional charge to be agreed between both parties.

9.5 In addition to the above, Microsoft may terminate your status as a Customer at any time.

10. Trustmarque Related Services

10.1 Where Trustmarque Related Services are being provided, our standard terms and conditions; <https://www.trustmarque.com/terms-and-conditions> apply. Any charges for the Trustmarque Related Services will be included within the Subscription charges.

10.2 We will provide the Trustmarque Related Services using reasonable skill and care and in accordance with the Service Description and Service Level Agreement for Trustmarque Cloud Solutions document in all material respects.

10.3 Our performance is dependent upon your prompt performance of any Customer obligations which include, among others, the responsibilities described in the Service Description and Service Level Agreement for Trustmarque Cloud Solutions document. You agree to make available to us an authorised representative who shall be authorised to make binding decisions on your behalf with regards to you Subscriptions.

10.4 In so far as we are required to process personal information and or Customer Data, you consent to us processing such personal information and/or Customer Data. Where you are using third party personal information, you will obtain the required consents from third parties under the application privacy and data protection laws.

10.5 Any title and all intellectual property rights in any document, material, idea, data or other information constituting an original item developed and supplied by us as part of the Trustmarque Related Services, shall remain vested in us.

11. Limitation of Liability

11.1 The following set out Trustmarque's entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

- a) any breach of this Agreement
- b) any use made by you of the Microsoft Products and/or Non-Microsoft Products or any part of them; and
- c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with these Terms of Supply.

11.2 Nothing in Section 5 excludes our liability for death or personal injury caused by our negligence; or for fraud or fraudulent misrepresentation.

11.3 Subject to b above, we shall not in any circumstances be liable whether in tort (including without limitation for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for loss of profits, business, anticipated savings, goodwill, data or revenue or indirect, special, incidental, consequential,

punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information.

11.4 We shall not in any circumstances be liable whether in tort (including without limitation for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for the Microsoft Products.

11.5 Subject to c and d above, Trustmarque's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising under or in connection with this Agreement shall be limited to the monthly Subscription charge for the relevant Subscription(s) of the month in which the event(s) giving rise to the liability occurred.

12. Data Protection

12.1 Within this Agreement the terms "controller", "data subject", "personal data", "personal data breach", "process ("processed" to be construed accordingly) and "processor" shall have the same meanings as in the Data Protection Legislation.

12.2 With respect to either Parties' rights and obligations under this Agreement, the Parties acknowledge that in relation to Your Data, you are a controller, and we are a processor.

12.3 The Parties acknowledge their respective obligations under the Data Protection Legislation and shall give each other such assistance as is reasonable to enable each other to comply with such obligations. However, for the avoidance of doubt, you agree that where we have satisfied a contractual obligation under this Agreement, then such satisfaction of the contractual obligation is deemed to satisfy the same or similar requirement under the Data Protection Legislation.

12.3.1 You warrant, represent and undertake to us that you have lawful grounds for the processing of Your Data.

12.4 Where we process Your Data under or in connection with this Agreement we shall:

12.4.1 save as required otherwise by law, only process Your Data as is necessary to perform our obligations under this Agreement, and only in accordance with your documented instructions.

12.4.2 put in place appropriate technical and organisational measures to meet our obligations under the Data Protection Legislation.

12.4.3 ensure our staff who will have access to Your Data are subject to appropriate confidentiality obligations.

12.4.4 be entitled to engage sub-processors to process Your Data subject to Us ensuring that equivalent requirements to those set out in this Conditions are imposed on any sub-processor(s), us remaining fully liable to you for the performance of the sub-processor's obligations and where applicable, providing you reasonable prior notice of any addition, removal or replacement of any such sub-processors;

12.4.5 You acknowledge and agree that under this Agreement if you are purchasing Azure services CloudCheckr will be a sub-processor.

12.4.6 not process or transfer Your Data outside the European Economic Area without your prior documented consent (which consent is hereby given in respect of the processing of

data by those third parties described where applicable in any Order). For the avoidance of doubt, any consent given under this clause includes the consent to transfer Your Data to the United Kingdom;

12.4.7 have in place the appropriate technical and organisational security measures to protect Your Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access;

12.4.8 notify you without undue delay after becoming aware of any personal data breach involving Your Data, taking into account the nature of processing and the information available to us. You confirm that you have had opportunity to review our breach notification policy, systems and guidance and concluded that they are suitable and adequate for the nature of the processing under this Agreement.

12.4.9 where applicable take appropriate technical and organisational measures, insofar as is possible, to assist you in responding to requests for data subjects for access to or rectification, erasure or portability of Your Data or for restriction of processing or objections to processing of Your Data (but we will not respond to any such data subject request except on written instructions from you). Furthermore, we will, upon your request, provide assistance relating to your security; impact assessment; data breach reporting requirements; and data protection or data privacy authority consultation obligations under the Data Protection Legislation taking into account the information available to us. We may charge you reasonable costs (or the rates otherwise agreed between the parties) for time spent and expenses incurred in providing co-operation and assistance as required by this clause;

12.4.10 make available to you such information reasonably requested and which we are reasonably able to provide, and permit and contribute to such audits, including inspections, conducted by you (or your appointed auditors), as is necessary to demonstrate compliance with the Data Protection Legislation. You will give reasonable notice of any audit and will be fully liable for any associated costs;

12.4.11 (save as may be required by law) may need to retain Your Data for an agreed period upon expiry or termination under this Agreement and at your cost and option either delete or return Your Data on expiry or termination of this Agreement, provided always that nothing in this clause shall oblige us to provide assistance which does not relate directly to this Agreement.

12.5 We shall inform you in writing if, in our opinion, an instruction from you infringes the Data Protection Legislation but only in relation to a breach of General Data Protection Regulation ((EU 2016/679)) and/or other Union or Member State data protection provisions and not jurisdictions outside of these areas.

However, you acknowledge that:

12.5.1 any information we provide is not legal advice or guidance in anyway whatsoever, and that we make no warranty or representation regarding the information (express or implied); and

12.5.2 this clause shall not relieve you of your obligation to ensure that all instructions to us comply with all applicable legislation, including all Data Protection Legislation; and

12.5.3 We may charge reasonable costs (or the rates otherwise agreed between the parties) for our time spent and expenses incurred in providing you with co-operation and assistance as required by this clause.

12.6 Notwithstanding anything to the contrary, if any of the following occur:

12.6.1 any changes/modifications to the Data Protection Legislation (including in connection with the withdrawal of the United Kingdom from the European Union and/or the EEA) including the requirement to amend, update, modify or replace any systems used to process the Your Data;

12.6.2 any new, clarified or amended guidance or polices issued by a supervisory authority;

12.6.3 any direction or instruction issued by a supervisory authority (whether relating to you or us in respect of processing of the Your Data);

then any increased effort or costs incurred by us in association with the aforementioned shall be additionally chargeable to you.

12.7 You shall indemnify and keep us indemnified against any liability, fines, claims, demands, expenses and costs (including legal fees) arising as a result of: any breach of Data Protection Legislation by you, or us acting in accordance with any instruction, policy or procedure on your behalf AND

12.8 You warrant and represent that any instruction, policy or procedure shall be lawful.

13. General

13.1 Notices. All notices and requests required or permitted under this Agreement shall be in writing, which shall include email.

Notices should be sent to:	Copies should be sent to:
CSP Sales Team Marlborough House, Westminster Place, York Business Park, Nether Poppleton, York. YO26 6RW eserviceshelp@trustmarque.com	Commercial Marlborough House, Westminster Place, York Business Park, Nether Poppleton, York. YO26 6RW eserviceshelp@trustmarque.com

13.2 New terms and conditions. Upon the renewal of your Subscription, or the placement of further Order for additional Subscriptions you may be required to sign a new Agreement and/or Microsoft Customer Agreement, a supplemental agreement or an amendment to this Agreement and/or Microsoft Customer Agreement.

13.3 Assignment. You may not assign, novate or otherwise transfer or sub-contract or otherwise deal in any of Your rights and/or obligations under this Agreement, whether in whole or in part, without our prior written consent, such consent not to be unreasonably withheld or delayed. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

13.4 Severability. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

13.5 Waiver. No failure to exercise or delay in exercising a right or remedy under this Agreement or otherwise in law will constitute grounds from which to infer that the Party so

delaying or failing has waived or elected to abandon that right or remedy in respect of any circumstances or events, past, present and/or future. No single or partial exercise of any right or remedy under this Agreement in law will preclude or restrict the further exercise of that right or remedy.

13.6 Jurisdiction and Governing law. This Agreement and any dispute or claim arising out of or in connection with them or their subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Subject to Clause 24, the Parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement its or their subject matter or formation (including without limitation non-contractual disputes or claims).

13.7 Entire Agreement. This Agreement and any other documents that may be referred to in it or annexed to it, constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any prior arrangement, understanding or agreement between them in relation thereto. Each of the Parties acknowledges and agrees that in entering into this Agreement and the documents referred to in it or annexed to it, it does not rely on the statement, representation (whether innocent or negligent), assurance or warranty (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in this Agreement those documents. This Agreement is made for the benefit of the Parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by anyone else.

I acknowledge and accept the terms, upon which We will supply Microsoft Cloud Solutions when placing an Order.

SIGNED BY TRUSTMARQUE SOLUTIONS LTD:	SIGNED BY A DULY AUTHORISED REPRESENTATIVE OF THE CUSTOMER:
	Full Entity and registered Address:
NAME PRINTED:	NAME PRINTED:
CAPACITY:	CAPACITY:
DATE:	DATE: